

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
LaMarque, TX, Employer**

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**Docket No. 10-1564  
Issued: February 18, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 25, 2010 appellant filed a timely appeal from a March 31, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than two percent bilateral arm permanent impairment.

**FACTUAL HISTORY**

On November 19, 2008 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome as a result of his federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome on January 5, 2009. Appellant underwent a right carpal tunnel release on February 12, 2009 and a left carpal tunnel release on March 12, 2009.

In a report dated April 23, 2009, Dr. Suhail Al-Sahli, a chiropractor, provided a history and results on examination. He opined that, under the fifth edition of the American Medical Association, *Guides the Evaluation of Permanent Impairment*, appellant had 38 percent whole person impairment. Dr. Al-Sahli provided range of motion results on a separate evaluation form and indicated that appellant had 38 percent left arm impairment and 34 percent right arm impairment.

In a report dated May 20, 2009, an Office medical adviser found that the report from Dr. Al-Sahli was not sufficient to determine impairment. He noted that in compression neuropathies, additional impairment is not given for decreased grip strength, and in the absence of a regional pain syndrome, additional impairment values are not given for decreased motion. The Office medical adviser also stated that the maximum impairment available *via* the median nerve at the wrist was 10 percent, and strength loss should not be utilized unless at least one year has passed since injury or surgical treatment. He recommended referral for a second opinion examination and evaluation under the current sixth edition of the A.M.A., *Guides*.

The Office referred appellant to Dr. Gary Freeman, an orthopedic surgeon, for a second opinion examination. In a June 23, 2009 report, Dr. Freeman reviewed a history and provided results on examination. Under the sixth edition of the A.M.A., *Guides*, he found that appellant had two percent impairment to each arm. Dr. Freeman identified Table 15-23 and explained that the rating was based on a default Grade 1 modifier due to mild intermittent symptoms, normal physical findings and a normal functional scale.

By report dated July 28, 2009, an Office medical adviser concurred that appellant had two percent bilateral arm impairment under the A.M.A., *Guides*. Under Table 15-23, the grade modifier for test findings, history and functional scale was one and for physical findings a grade modifier of zero. The Office medical adviser found that maximum medical improvement was June 23, 2009, the date of examination by Dr. Freeman.

In a decision dated September 30, 2009, the Office issued schedule awards for two percent permanent impairment to each arm.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on January 13, 2010. He submitted an October 8, 2009 report from Dr. Ian Stewart, an orthopedic surgeon who performed the right and left carpal tunnel releases. Dr. Stewart stated that Dr. Al-Sahli properly followed the fifth edition of the A.M.A., *Guides*, as the sixth edition was not adopted until May 1, 2009. He concluded that Dr. Al-Sahli's impairment rating was correct and remained valid.

By decision dated March 31, 2010, the hearing representative affirmed the September 30, 2009 decision.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member

or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>3</sup>

### ANALYSIS

In an April 23, 2009 report, Dr. Al-Sahli provided a rating of 38 percent left arm impairment under the fifth edition of the A.M.A., *Guides*, and 34 percent right arm impairment. The Act provides that the term “physician” ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”<sup>4</sup> Dr. Al-Sahli did not diagnose a spinal subluxation or provide treatment limited to manual manipulation of the spine. He is not a physician under the Act with respect to rating the degree of permanent impairment of appellant’s arms. Dr. Al-Sahli’s report is of no probative value.<sup>5</sup>

In an October 8, 2009 report, Dr. Stewart briefly stated that Dr. Al-Sahli was correct in applying the fifth edition of the A.M.A., *Guides*. The Board notes that Dr. Stewart did not provide any results on examination or an opinion as to permanent impairment. The appropriate edition of the A.M.A., *Guides* is not based on the date of the physician’s report but the date of the Office’s schedule award decision. Office decisions issued after May 1, 2009 are to be based on the sixth edition. As the decision in this case was dated September 30, 2009, the determination as to permanent impairment was based on the sixth edition of the A.M.A., *Guides*.

The second opinion physician, Dr. Freeman, provided an opinion under the sixth edition of the A.M.A., *Guides*. He identified Table 15-23, a table used for entrapment/compression neuropathy impairments. This table is based on establishing a grade modifier after consideration of test findings, history and physical findings.<sup>6</sup> A grade modifier 1 is appropriate for test findings showing a conduction delay, a history of mild intermittent symptoms and normal physical findings. Both Dr. Freeman and the Office medical adviser agreed that a grade modifier 1 was appropriate in this case. The default impairment for the grade is two percent, which may be modified based on a functional scale, an assessment of the impact on daily living activities.<sup>7</sup>

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>3</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>4</sup> 5 U.S.C. § 8101(2).

<sup>5</sup> See Jack B. Wood, 40 ECAB 95, 109 (1988).

<sup>6</sup> A.M.A., *Guides* 449, Table 15-23.

<sup>7</sup> *Id.* A normal functional scale reduces the impairment to one, a moderate scale rises to three and a mild function scale is no adjustment from the default of two percent.

Dr. Freeman noted a normal functional scale, which would reduce the impairment to one percent, although he did not adjust the default value. The medical adviser identified a mild functional scale and kept the arm impairment at two percent. The Board finds no evidence of a greater impairment under Table 15-23.

The weight of the medical evidence therefore does not establish more than two percent impairment to each arm under the sixth edition of the A.M.A., *Guides*. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Appellant's impairment was two percent of each arm, or 6.24 weeks of compensation, the total paid was 12.48 weeks. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.<sup>8</sup> In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Freeman. The awards properly ran for 12.48 weeks commencing June 23, 2009.

On appeal, appellant stated that Dr. Sahli's impairment rating should be given weight. As noted, a chiropractor is not defined as a physician under the Act for treatment other than manual manipulation of the spine to correct a spinal subluxation. Appellant stated that Dr. Freeman did not perform an examination. Dr. Freeman provided results on examination in his June 23, 2009 report and reviewed the medical evidence and information provided by appellant. As noted, the Board finds the medical evidence does not establish more than two percent permanent impairment to each arm.

### **CONCLUSION**

The Board finds the probative evidence does not establish more than two percent bilateral arm impairment.

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<sup>8</sup> *Albert Valverde*, 36 ECAB 233, 237 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 31, 2010 is affirmed.

Issued: February 18, 2011  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board